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Issue Date: 26 February 2004

**CASE NOS.: 2003-LHC-787
 2003-LHC-2040**

**OWCP NOS.: 08-121551
 05-103181**

IN THE MATTER OF

**DWIGHT E. BRAXTON,
 Claimant**

v.

**AARIG TERMINAL SYSTEMS,
 Employer**

and

**COMMERCE & INDUSTRY INS. CO.
ST. PAUL INSURANCE
AMERICAN INTERSTATE INSURANCE CO.,
 Carriers**

APPEARANCES:

**CHRISTOPHER J. STAHLAK, ESQ.
 On behalf of the Claimant**

**PAUL B. HOWELL, ESQ.
 On behalf of the Employer and
 St. Paul Insurance Co.**

**PHILLIP W. JARRELL, ESQ.
 On behalf of the Employer and
 American Interstate Ins. Co.**

JEFFREY I. MANDEL, ESQ.

**On behalf of the Employer and
Commerce & Industry Ins. Co.**

**Before: LARRY W. PRICE
Administrative Law Judge**

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (herein the Act), 33 U.S.C. § 901, et seq., brought by Dwight E. Braxton (Claimant) against AARIG Terminal Systems (Employer) and Commerce & Industry Insurance Company (C&I), St. Paul Insurance Company (St. Paul) and American Interstate Insurance Co. (AI), all of whom are Carriers.

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. A formal hearing was held in Metairie, Louisiana, on November 14, 2003. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. The following exhibits were received into evidence:

1. Joint Exhibit 1;
2. Claimant's Exhibits 1-25;
3. Employer's Exhibits 1-34; and
4. AI's Exhibits 1-5.

Based upon the stipulations of the parties, the evidence introduced, and the arguments presented, I find as follows:

I. STIPULATIONS

1. Jurisdiction is not a contested issue. At the time of the alleged injuries, the claimant was covered by the U.S. Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, et seq., since he was engaged in building marine loading arms for loading ships alongside the navigable waters of the United States.
2. Date of injuries/accidents: September 25, 1996.
August 1, 2000—alleged accident.
November 5, 2001—alleged accident.

3. Injury in course and scope of employment: Yes as to September 25, 1996 accident.
4. Employer/employee relationship at time of accident: Yes as to all accidents.
5. Date employer advised of injury: September 25, 1996 injury—September 25, 1996.
6. Date Notice of Controversion filed: November 21, 1997 (September 25, 1996 accident); July 17, 2003 (August 1, 2000 accident); October 2, 2002 (November 5, 2001 accident).
7. Date of Informal Conference: December 3, 2002, for September 25, 1996 and November 5, 2001 injuries only.
8. Average weekly wage at time of injury: \$587.44 at time of September 25, 1996 injury.
9. Nature and extent of disability:
 - a. For September 25, 1996 injury: temporary total disability from March 29, 1997, through May 11, 1997, and from March 19, 2002, through September 15, 2002, at \$421.07 per week.
 - b. For August 1, 2000 alleged injury: no benefits paid.
 - c. For November 5, 2001 alleged injury: no benefits paid.
10. Permanent disability: Yes as to scheduled member. The parties stipulate that Claimant is not entitled to permanent and total disability and has had no continuing loss of wage-earning capacity since January 1, 2003.
11. Date of maximum medical improvement (MMI): December 9, 2002.
12. St. Paul Insurance Company provided coverage for Employer during the time period including the September 25, 1996 injury.
13. American Interstate Insurance Company provided coverage for Employer from January 30, 2000, through January 30, 2001.
14. Commerce and Industry Insurance Company provided coverage for Employer between September 15, 2001, and September 15, 2002.

II. ISSUES

The unresolved issues in this proceeding are:

1. Fact of injury of August 1, 2000.
2. Fact of injury of November 5, 2001.
3. Causation/intervening cause of temporary total disability in 2002 and permanent scheduled disability.
4. Responsible carrier.
5. Notice of injuries of August 1, 2000, and November 5, 2001.
6. Statute of limitations.
7. Average weekly wage for injuries of August 1, 2000, and November 5, 2001.
8. Medical benefits.
9. Credit for prior compensation award and wages or sick leave paid at the same time as compensation.
10. Penalties, interest and attorney fees.
11. Reimbursement to St. Paul for benefits paid since August 1, 2000.

III. STATEMENT OF THE CASE

Claimant's Testimony

Claimant is a fifty-two year old man who resides in Saucier, Mississippi. (Tr. 28). He is currently employed as a service manager and part-owner of Northwind Fabrications, a company that services marine loading arms, which are located on ship docks and are used for loading and unloading liquid materials onto vessels. (Tr. 28, 29-30). Before he went to work with Northwind in 2003, Claimant worked for Employer as a service technician for almost eleven years. (Tr. 29). Claimant estimated that he has worked on over 500 docks in over thirty states. (Tr. 30).

In 1988, while working for a company called Paceco, Claimant sustained a work-related injury when he was hit by a ten-ton crane and knocked off a ballast can. (Tr. 31,

80-81). In addition to fracturing his left knee and elbow, Claimant broke his right wrist. Claimant had two pins put in his hand by Dr. Magruder Corban but elected not to undergo a total wrist fusion because he did not want to give up the motion in his wrist. (Tr. 32). Instead, Claimant began treating with Dr. Gregory Kinnett, who put a prosthesis in Claimant's wrist. (Tr. 32, 34-35). Following that procedure, Claimant had about three or four follow-up surgeries in the next four years. (Tr. 35, 82-83). Dr. Kinnett eventually assigned Claimant a thirty percent impairment rating to the right arm and told him that he had limitations on his wrist and should not do certain things with it, such as heavy lifting and slinging a sledge hammer. (Tr. 85-86). As a result of the 1988 work-related accident, Claimant settled a workers' compensation claim for \$40,690 under the Mississippi Workers' Compensation Act. (Tr. 35-36, 84). Claimant affirmed that he has had problems with his hand ever since his original injury in 1988. (Tr. 113).

Claimant eventually returned to fabricating marine loading arms, and although his wrist hurt from time to time, he had good movement with it. (Tr. 35). He worked for a company called Sanco for about a year and a half in 1990 or 1991 before going to work for Employer, who was aware of Claimant's wrist prosthesis. (Tr. 37, 40). As a service technician, Claimant traveled by truck from job site to job site. (Tr. 39). The job required work in excess of Claimant's official restrictions from Dr. Kinnett. (Tr. 86). Claimant traveled by himself when the jobs did not require manual labor, but whenever a job did involve heavy work, he would take another man with him. Claimant never had problems doing his work, and he never took sick days from work. He was awarded bonuses every year, and he was never reprimanded for not doing his job. (Tr. 41). Claimant continued to treat with Dr. Kinnett, going in for occasional check-ups. (Tr. 87).

Claimant affirmed that on May 8, 1995, he sustained a workplace accident when a hammer struck the handle of the wrench he was holding, hitting the front part of his hand. Claimant went to Dr. Kinnett to make sure he had done no damage to his hand. (Tr. 116).

On September 25, 1996, Claimant was on a job in Yorktown, Virginia, when a flange closed in on his right wrist. (Tr. 42-44, 47). When he pulled out his hand, it was bleeding and painful, so Claimant went to the emergency room, where his hand was bandaged. (Tr. 44). Claimant returned to the job site but did not get involved in the work. He called Brad Yates, Employer's service manager, and told him about the accident. (Tr. 45). When he returned home, he made an appointment with Dr. Kinnett. Claimant continued to work for another six weeks before he saw Dr. Kinnett, although he did not do any heavy loading during that time. (Tr. 89-90). When Claimant saw Dr. Kinnett, he learned that he had cracked the prosthesis and fractured the bone around the plastic joint. (Tr. 46). When given the option of having the prosthesis repaired or undergoing a fusion, Claimant elected to have the prosthesis repaired so he could keep the range of motion in his wrist. (Tr. 46-47). Claimant continued to work for some time until undergoing the procedure to revise his wrist replacement on April 1, 1997. (Tr. 90). Claimant acknowledged that at the time of this procedure, he was aware that eventually

his prosthesis would give out completely and he would need a fusion. (Tr. 118-19). Claimant was off work for about five or six weeks. (Tr. 47, 91). Employer paid his medical bills and also provided workers' compensation benefits.

Claimant's new prosthesis gave him more trouble than the original one. He did not have the same range of motion as before, and he generally experienced more pain. (Tr. 48-49). Claimant returned to see Dr. Kinnett on a regular basis. (Tr. 49). Dr. Kinnett told Claimant that his type of work was bad for his hand but that it could last for several years if he avoided heavy loading. (Tr. 49-50). Dr. Kinnett did not assign any new restrictions on Claimant. (Tr. 91). When Claimant returned to work, he began working with a helper full-time so as to avoid any heavy loading, which could further damage his wrist. (Tr. 48, 50). Claimant still pulled on wrenches, climbed ladders and did heavy pushing and pulling. (Tr. 92-93).

In February 2000, Claimant saw Dr. Kinnett because his wrist implant was loose and he had fractured a finger. Claimant affirmed that Dr. Kinnett brought up the option of undergoing a fusion. (Tr. 107). Claimant and Dr. Kinnett had discussed the fusion on several occasions throughout the years since Claimant's 1988 work-related accident and continued to talk about it during their appointments. (Tr. 107, 119-21).

On July 31 or August 1, 2000, Claimant was on a job in Beaufort, South Carolina,¹ with one of his helpers. (Tr. 105). He was pulling on a flange when he felt a pop and some pain in his right wrist. The pain was more severe than his usual pain. Claimant went to his truck to take some Aleve for the pain. (Tr. 51). He called Mr. Yates and reported that he had felt a pop in his wrist and that he needed to go to the doctor when he returned home. (Tr. 55). Claimant also mentioned the incident to his wife. (Tr. 56). Claimant never filled out an accident report. (Tr. 108).

When Claimant returned home on August 1 or 2, he called Dr. Kinnett and made an appointment. (Tr. 54). At the appointment, Dr. Kinnett discovered that Claimant's prosthesis had broken away from the bone. (Tr. 56). Dr. Kinnett told Claimant that the prosthesis would no longer be of benefit to him and that essentially his only option was to undergo a fusion. (Tr. 56-57). Claimant returned to work, but he often wore a hand brace to support his wrist. (Tr. 58-59). After this incident, he noticed more pain and swelling in his hand. He felt cold sensations and his hand cramped a lot. (Tr. 59). Even though he used a hand brace, Claimant felt that his condition was worsening. (Tr. 95).

¹ Claimant initially testified in his deposition that he was in Houston, Texas, when the incident occurred. In his direct testimony at the hearing, he acknowledged that he was mistaken about being in Houston and that after looking at his "day sheets," he was able to determine that he was in New Jersey on the day in question. (Tr. 51, 103-06). In fact, as Claimant admitted during cross-examination, he misread his day sheet and was actually in South Carolina on that day. Claimant was confused because the billing address for the day sheet was in New Jersey. (Tr. 105-06, 134-35).

Claimant agreed that he was aware that he needed a wrist fusion before September 15, 2001, the date when C & I's insurance coverage went into effect. (Tr. 124).

Claimant testified that on November 5, 2001,² he was on a job in Chalmette, Louisiana,³ and was working on some scaffolding while wearing a safety harness. (Tr. 60-61). He caught his foot in the harness and slipped, and when he grabbed the handrail, he felt a pain in his hand. (Tr. 61, 64). Claimant took some Aleve and finished up the job. (Tr. 65-66). He then called Mr. Yates but did not remember whether he mentioned the incident to him. (Tr. 66). Claimant went to see Dr. Kinnett on November 7, at which time he decided to undergo the fusion surgery. (Tr. 66). At some point after this incident, Claimant developed some sort of mass in his finger which caused it to swell up. (Tr. 97). Claimant acknowledged that he had no memory of developing a mass in his finger, although Dr. Kinnett's records indicated that he had. (Tr. 108). Claimant later informed Mr. Yates and Jake Keary, the company owner, of his decision. (Tr. 67).

The fusion was performed on March 19, 2002. Claimant waited so long to do the fusion because he had a hectic workload. (Tr. 58). After the fusion was performed, Claimant underwent one or two additional procedures to remove some bone particles from his hand. (Tr. 67-68). In December 2002, Dr. Kinnett released Claimant to return to work with a thirty percent disability impairment to the right arm and a thirteen percent disability impairment to the right thumb. (Tr. 68, 99-100). He received workers' compensation benefits until September 2002. (Tr. 68). His medical expenses were paid until September 2002 as well. Since that time, Claimant has received neither workers' compensation benefits nor medical expenses. (Tr. 69).

Claimant went back to work once he was released by Dr. Kinnett. (Tr. 73). Claimant testified that Mr. Yates told him that Employer could not continue to employ him because he posed too much risk of liability given his physical condition. (Tr. 76). Since he no longer had a job with Employer, he began working for Northwind. (Tr. 74). Claimant makes about the same amount of money with Northwind that he made while working for Employer, although he now has to pay for his own insurance. (Tr. 101).

Since the fusion, Claimant has no motion left in his right wrist and is unable to do things that he used to do. (Tr. 68, 77). He no longer has pain in his hand, other than an intermittent pain below his thumb. (Tr. 70). Claimant's job still requires him to do some

² During cross-examination, Claimant acknowledged that his LS-203 for this incident indicated that it took place in December 2001 and that he was unclear about the actual date of occurrence. (Tr. 127-32). However, the parties stipulated that if any accident had in fact occurred, it occurred on November 5, 2001. (JE-1).

³ Because of some confusion regarding Claimant's notations on the applicable day sheet, it is unclear whether Claimant was in Chalmette, Louisiana, or Geismar, Louisiana, when the alleged accident in question occurred. (Tr. 130-31).

heavy lifting and to use hand tools. (Tr. 73). Although Claimant has good strength in his right hand, he uses his left hand more now. (Tr. 70-71).

Testimony of Curtis Farmer

Mr. Farmer worked for Employer for about three months in the summer of 2000 as a helper for Claimant. As a helper, he assisted Claimant with changing seals, doing hydraulic work and working on mechanical arms. (Tr. 137). They traveled to several states, including Louisiana, Texas and South Carolina. Mr. Farmer did not recall any specific incident in which Claimant hurt his wrist, but he knew that Claimant had a sore wrist and took Aleve for his pain. (Tr. 138). He recalled that Claimant told him about making an appointment with the doctor because his hand was sore. (Tr. 138-39).

Testimony of Kayleen Braxton

Mrs. Braxton is married to Claimant. She first learned of his 1988 work-related accident when one of Claimant's co-workers called and told her to come to the emergency room. (Tr. 141). Claimant was in the hospital for about a week and then had a long recovery time at home. Once Claimant was released from the doctor, he and Mrs. Braxton built their house and put in a fence, a brick sidewalk and some porch railings. (Tr. 142). Mrs. Braxton did not recall Claimant complaining about any pain while doing this work, and she noted that Claimant is "not much of a complainer." (Tr. 143).

After Claimant recovered from his 1996 work-related accident and subsequent surgery, he started taking Aleve, and Mrs. Braxton noticed that sometimes his wrist was swollen. (Tr. 143-44). She recalled one occasion when Claimant called and told her that he had felt a pop in his wrist and needed to see Dr. Kinnett. (Tr. 144). After Claimant's wrist popping incident, Mrs. Braxton observed more swelling and cramping in Claimant's wrist. (Tr. 144-45). In addition, Claimant started handling his wrist differently. After Claimant underwent the fusion surgery, he had no movement in his wrist. (Tr. 145). Whenever Claimant does anything involving wrist movement now, he has to use his left hand. (Tr. 146).

Testimony of Kurtis Windham

Mr. Windham is an owner and partner with Claimant at Northwind Fabrications. (Tr. 147). In the summer of 2000, he was working for Employer as a fitter/welder and sometimes worked with Claimant on the road, servicing marine loading arms. (Tr. 148). On the road, Claimant called the office and talked to Mr. Yates on a regular basis. (Tr. 150). Mr. Windham was aware of Claimant's wrist problems but testified that Claimant was still able to do his job. (Tr. 148). He described Claimant as a good worker who did not necessarily favor his right arm when he worked. (Tr. 149). He knew that Claimant

had injured his wrist in July or August 2000 but was not with Claimant when the incident occurred. (Tr. 149).

Mr. Windham continued working with Claimant until Claimant went out for his fusion surgery in March 2002. (Tr. 151-52). Mr. Windham usually worked in the shop and sometimes saw Claimant a few times a week, while other times he might not see Claimant for a couple of weeks. Mr. Windham heard Claimant complain about his hand sometimes at work. (Tr. 152).

Mr. Windham was present at a meeting at Claimant's house when Mr. Yates told Claimant that Employer was going to fire him because "workers' comp was going to drop him." (Tr. 151).

Testimony of Alton Northrup

Mr. Northrup is a co-owner of Northwind Fabrications, along with Mr. Windham and Claimant. (Tr. 154). He has known Claimant for about thirty-five years and worked with him off and on for about fifteen years. (Tr. 154-55). Mr. Northrup was employed as a sub-contractor for Employer until he left in July 2001 to form Northwind. (Tr. 158-59). Mr. Northrup saw Claimant on a weekly basis unless Claimant was working on the road, and he knew that Claimant had problems with his hand because Claimant talked about being sore and took Aleve for his pain. (Tr. 159-60). Mr. Northrup did not know whether Claimant's hand problems worsened over time. He was not with Claimant at the time of the August 2000 incident and did not recall working with Claimant at the time of the November 2001 incident. (Tr. 160-62).

Claimant began working with Northwind in January 2003. (Tr. 154-55). Mr. Northrup tries to keep Claimant from doing certain things, such as pulling on wrenches, because of his hand condition. (Tr. 157). Claimant does not use his right hand much and typically relies more on his right arm when he is lifting or climbing. (Tr. 157-58).

Testimony of Brad Yates

Mr. Yates worked for Employer from 1985 until 2003. (Tr. 163). When Claimant began working for Employer, Mr. Yates was aware of his wrist condition but did not know that he had work restrictions. (Tr. 167). Mr. Yates testified that he probably would not have hired Claimant as a service technician if he had known of the restrictions. (Tr. 167-68). According to Mr. Yates, Claimant had some problems doing the work even before his 1996 work-related accident. (Tr. 168). After the 1996 accident, Claimant did not lose any more time from work until he underwent the fusion in March 2002, although he did complain to Mr. Yates about certain activities hurting his wrist. (Tr. 168-69, 186-87). Employer provided a full-time helper for Claimant so that he could avoid some of the heavier labor on the job. (Tr. 178).

During July and August 2000, Mr. Yates was a production and service manager and supervised Claimant. (Tr. 163-64). As part of his duties, Mr. Yates was in charge of filling out accident reports. (Tr. 180). According to an on-site service report, or "day sheet," Claimant was performing work in Beaufort, South Carolina, from July 30 through August 1, 2000. (Tr. 164). Employer's safety policy was that employees were to report all work-related accidents immediately, no matter how minor. Mr. Yates believed that Claimant was aware of this policy, and in fact, Claimant did report accidents to Mr. Yates on some occasions. (Tr. 176). Mr. Yates testified that Claimant never reported injuring his wrist on that job and that he only learned of the injury on June 17, 2003, when the Department of Labor sent him an LS-202 to fill out. (Tr. 164-66).

Mr. Yates does not know whether or not Claimant actually injured his wrist in August 2000. (Tr. 170-71). Mr. Yates also has no personal knowledge as to whether Claimant injured his wrist on November 5, 2001, but noted that he was out of the office on another job during the time in question. (Tr. 172-74, 177). Mr. Yates acknowledged that Claimant's condition did seem to worsen over time. (Tr. 174-75).

Mr. Yates denied ever having any conversations with Mr. Keary about the fact that their experienced modification rate (EMR), which affects the cost of insurance, was too high because they had to carry Claimant on their insurance. (Tr. 181). Mr. Yates acknowledged that Employer changed insurance carriers but did not know whether Employer had difficulty keeping insurance. (Tr. 182). He did not recall any time when Employer was operating without insurance. (Tr. 183). Mr. Yates denied ever telling Claimant that he could not return to work for Employer because he was a risk on Employer's insurance. (Tr. 184).

Medical Evidence

Deposition of J. Gregory Kinnett, M.D.

Dr. Kinnett is an orthopedic surgeon. (EX. 19, p. 5). He first saw Claimant on April 24, 1989. (EX. 19, p. 6). Claimant complained of severe pain with limited range of motion in his right wrist and related the history of his 1988 work-related accident. (EX. 19, pp. 6-7). Dr. Kinnett affirmed that this injury was a significant one. (CX. 22, p. 24). After examining Claimant and studying some roentgenograms, Dr. Kinnett diagnosed Claimant with post-traumatic degenerative changes in the right wrist. (EX. 19, pp. 8-11). He discussed treatment options with Claimant, including limited intracarpal arthrodesis and total wrist arthroplasty. (EX. 19, pp. 11-12). Dr. Kinnett affirmed that one of the risks of a total wrist arthroplasty was the mechanical failure of the implant but pointed out that all joints, whether normal or artificial, will eventually fail. (CX. 22, pp. 25, 28-29). If a patient is non-compliant after a total wrist arthroplasty, the artificial joint may have a shorter life. (CX. 22, p. 29).

On June 7, 1989, Claimant underwent a total wrist arthroplasty. (EX. 19, p. 14). After the surgery, many of Claimant's symptoms dissipated, but he did require an injection for tendonitis. (CX. 22, p. 26). On January 31, 1990, Claimant underwent another surgery to remove some bone and alleviate his tendonitis. (EX. 19, pp. 16-17). Claimant underwent surgery to remove some bone fragment on September 21, 1990. (EX. 19, p. 20). On June 13, 1991, Claimant underwent surgery to remove some osteophytes in his hand. (EX. 19, p. 24). On August 13, 1991, Dr. Kinnett placed Claimant at maximum medical improvement (MMI), with a permanent partial disability impairment rating of thirty percent to the right upper extremity. (EX. 19, pp. 25-26). At that time, Dr. Kinnett felt that Claimant was a candidate for vocational rehabilitation to return to work in a sedentary-type position. (EX. 19, p. 25).

Once Claimant was released to work, Dr. Kinnett did not see him again for nearly four years. (EX. 19, p. 26). He was not surprised to learn that Claimant continued to experience pain in his wrist but chose to work through the pain rather than returning to the doctor. (CX. 22, pp. 30-31). Dr. Kinnett pointed out, however, that he would not have expected Claimant to experience pain and discomfort after being released to return to work, because the primary reason to do a total joint arthroplasty is to relieve pain. (CX. 22, p. 31). On May 12, 1995, Claimant returned to Dr. Kinnett with complaints of pain and limited range of motion in his right hand. (EX. 19, p. 27). Claimant reported that he had been injured while holding a large wrench in his right hand when his companion struck the handle of the wrench with a hammer. (CX. 22, p. 32). Dr. Kinnett diagnosed Claimant with an axial loading injury resulting in disruption of the bond between the methacrylate and bone. (CX. 22, p. 33). He gave Claimant a wrist splint and prescribed some mild pain medication as well as some anti-inflammatory medication. (EX. 19, p. 27). Claimant returned for check ups in June and September 1995, by which time his pain had essentially resolved. (EX. 19, p. 28). Dr. Kinnett advised Claimant to return in six months for another evaluation. (EX. 19, pp. 28-29).

Claimant returned to see Dr. Kinnett on July 24, 1996, complaining of pain in the right wrist. Although his pain was aggravated by his activities, Claimant was still able to work. Roentgenograms revealed progressive osteolysis and an apparent fracture of the dorsal aspect of the third metacarpal. Claimant was to return in three months or sooner, if his pain increased in the meantime. (EX. 19, p. 29).

Dr. Kinnett next saw Claimant on November 11, 1996. According to Dr. Kinnett's records, Claimant had sustained a work-related injury on October 28, 1996, as opposed to September 25, 1996. (EX. 19, pp. 30-31). Claimant complained of pain, swelling and tenderness over the dorsal aspect of the right hand and medial aspect of the right wrist near the thumb. He reported that his injury had occurred in Virginia when he was working on a machine loading arm and a flange came together, crushing his right hand and wrist. Claimant complained of numbness in his right thumb, index and middle

fingers. (EX. 19, p. 31). He had significant weakness when attempting to do anything with his right upper extremity. (EX. 19, pp. 31-32). After the physical examination and roentgenograms, Dr. Kinnett's impression was a fracture of the third metacarpal with displacement of the intermedullary portion of the carpal component of the total wrist arthroplasty. Dr. Kinnett presented Claimant with several treatment options, and Claimant elected to proceed with a revision of the total wrist arthroplasty. (EX. 19, p. 32).

Dr. Kinnett performed the arthroplasty revision surgery on April 1, 1997. (EX. 19, p. 35). The revision was as functional as Claimant's original prosthesis, but he did begin experiencing new symptoms, such as a cold feeling in his wrist, that he had not experienced before. (EX. 19, p. 37). However, Dr. Kinnett agreed that Claimant probably remained at the same level of permanent impairment that he had before the revision. (EX. 19, p. 38). According to Dr. Kinnett, if Claimant continued his activities at the same level as he had done before the revision surgery, there would be an expectation that his prosthesis might fail earlier than it would if he did not. (CX. 22, p. 35).

On April 30, 1997, Dr. Kinnett told Claimant to return in six weeks for roentgenograms and a possible return to work, and he was under the impression that Claimant might have returned to light duty during that time. (EX. 19, p. 38). Dr. Kinnett opined, however, that Claimant never reached MMI after the revision because his symptoms never stabilized. (EX. 19, pp. 40-41). Dr. Kinnett saw Claimant every few months during 1997, and Claimant continued to have complaints of a cold feeling in his wrist. (EX. 19, pp. 43-45). In January 1998, Dr. Kinnett again advised Claimant not to do any lifting or heavy activities with his right hand. (EX. 19, p. 45). Claimant complained of severe pain in his hand, primarily in the metacarpal phalangeal joint. Dr. Kinnett testified that this pain was in a different place than Claimant's prior joint pain, which was located in the wrist area and mid-third metacarpal area. (CX. 22, p. 36).

Claimant saw Dr. Kinnett every few months in 1998, complaining of pain which was aggravated by heavy activities. (EX. 19, pp. 45-46). In March 1998, Dr. Kinnett advised Claimant that his engagement in vigorous activities had possibly shortened the life of his wrist components, and he recommended that Claimant consider an arthrodesis of the right wrist. (CX. 22, pp. 38-39). In August 1998, Dr. Kinnett noted that Claimant was having difficulty climbing ladders, using wrenches and engaging in heavy activity because of cramping and pain. (CX. 22, p. 12). In his opinion, Claimant was attempting to participate in work that was too vigorous for him and should consider vocational rehabilitation. (EX. 19, p. 46). In December 1998, Dr. Kinnett told Claimant that if his symptoms persisted, he might need a revision of the total wrist to an arthrodesis, but Claimant did not choose to do anything at that time. (EX. 19, p. 48). Dr. Kinnett was aware that Claimant continued to work during this time, and he affirmed that Claimant

underwent periods of exacerbation and remission for the next few years. (EX. 19, pp. 47, 48-49).

In February 2000, Claimant continued to complain of pain. (CX. 22, pp. 44-45). Dr. Kinnett's diagnosis was osteolysis with loosening and probable recurrent fracture of the metacarpal. He again asked Claimant to consider the option of arthrodesis. (In August 2000, Claimant went to see Dr. Kinnett after feeling a pop in his right wrist. Claimant was concerned that the joint might have loosened. (CX. 22, p. 45). Dr. Kinnett testified that although this condition did involve the right wrist, he did not know whether it was a new condition or a worsening of Claimant's prior condition. (CX. 22, pp. 46-47). They once again discussed the option of wrist arthrodesis, but Claimant did not elect to undergo the procedure at that time. (CX. 22, p. 49). Dr. Kinnett testified that Claimant also had an option to do nothing, alter his work habits and tolerate the pain. (CX. 22, p. 50). In January 2001, Claimant reported increased pain in the dorsal aspect of his hand as well as some pain in the right wrist. (CX. 22, pp. 52-53). Dr. Kinnett again advised Claimant of the option of wrist arthrodesis. (CX. 22, p. 53).

On November 7, 2001, Claimant returned to see Dr. Kinnett with pain in the right hand and wrist. Claimant told Dr. Kinnett that two days earlier, he had fallen and caught himself with his right hand, exacerbating or accentuating his pre-existing pain. (EX. 19, p. 49). On physical examination, Claimant had no redness and swelling but did have a small mass over the base of the long finger metacarpal, pain on palpation and weakness of power grasp. (EX. 19, p. 50). Dr. Kinnett testified that he was unable to characterize the incident as a minor exacerbation and merely stated that "it was another incident involving this man's wrist." (CX. 22, p. 54). He once again offered the arthrodesis as a treatment option. (CX. 22, pp. 54-55). Claimant elected to consider surgery to remove the total wrist component and undergo a right wrist arthrodesis, but he decided not to proceed immediately and was to return to Dr. Kinnett in ten weeks. (EX. 19, p. 52). When Claimant returned to Dr. Kinnett on January 21, 2002, he continued to have persistent wrist pain and was concerned about the mass over his finger. Claimant decided to proceed with the right total wrist removal. (EX. 19, p. 54).

On March 19, 2002, Dr. Kinnett removed Claimant's total wrist arthroplasty components and performed a right wrist arthrodesis. (EX. 19, p. 55). This procedure involved taking bone from Claimant's pelvis and grafting it into Claimant's wrist in an attempt to obtain a wrist fusion. (EX. 19, p. 56). After the surgery, Claimant returned to Dr. Kinnett a few times for check ups and surgical adjustments. (EX. 19, pp. 56-57). On December 2, 2002, Dr. Kinnett released Claimant to work effective December 9, with restrictions of no heavy lifting, no pulling and no pounding with the right upper extremity. (CX. 22, p. 5).

Dr. Kinnett last saw Claimant on April 16, 2003. (EX. 19, p. 58). Claimant still had pain at the basal aspect of the thumb and occasionally in the mid-region of the long

finger metacarpal. (EX. 19, pp. 57-58). He had no motion in his wrist and no evidence of redness, swelling or tenderness. He had some weakness of power grasp. The radiograph showed progressive consolidation and maturation of the arthrodesis. (EX. 19, p. 58). On April 16, Dr. Kinnett released Claimant with a permanent partial impairment rating of forty-five percent to the right hand, but he testified that he could not place Claimant at MMI until the radiographs showed complete consolidation of the arthrodesis. (EX. 19, pp. 59-60; CX. 22, pp. 5-6). Dr. Kinnett's original impairment rating was based on the American Academy of Orthopedics Manual for rating permanent physical impairment. On May 14, 2003, he converted his rating to thirty percent of the right arm according to the American Medical Association (AMA) guidelines. He agreed that Claimant had reached MMI as to his wrist. (CX. 22, p. 6). Claimant does not have any greater impairment to the arm since 1991, but he does have a thirteen percent impairment to the thumb, which was not rated in 1991. (CX. 22, p. 10). After a wrist is fused, the permanent restrictions have to do with the limitation of motion at the wrist, but there are no specific weight restrictions. Claimant's restrictions on heavy activities and power grasp are based on his thumb disability. (CX. 22, p. 62). Dr. Kinnett testified that if Claimant's condition has remained unchanged since that time, he would see no reason to change the impairment rating. (CX. 22, p. 8). He felt that Claimant currently has "an acceptable result" in his wrist. (CX. 22, p. 9).

Dr. Kinnett testified that Claimant would probably return to see him three months after his last appointment so that his progress could be evaluated. (CX. 22, pp. 56-57). Claimant would then be followed at six months and one year and on a yearly basis thereafter. (CX. 22, pp. 57-58). Typically, yearly visits after an arthrodesis are discontinued after about five years. If Claimant sustains no more traumatic injuries, there will be no need for any further surgery on the wrist. (CX. 22, p. 58).

Regarding the type of employment in which Claimant was engaged during the course of his treatment for the wrist condition, Dr. Kinnett testified that Claimant's heavy work activity was not what he suggested would be in Claimant's best interest. (EX. 19, p. 61). On many occasions, Dr. Kinnett suggested that Claimant undergo vocational rehabilitation so that he could pursue a less vigorous profession. (EX. 19, pp. 61-62). Dr. Kinnett testified that performing heavy and vigorous activity can be detrimental to a person with a total wrist arthroplasty. (EX. 19, p. 62). In Dr. Kinnett's opinion, Claimant's engagement in heavy activities altered the results of his initial surgery in that this surgery did not meet the usual expectations. (CX. 22, p. 13). Claimant's total wrist arthroplasty failed because of factors including time, activity level, recurrent loading and fracture of the supporting bones of one component. (CX. 22, p. 16).

As to the effects of Claimant's various work-related injuries upon his wrist condition, Dr. Kinnett testified that he could not be sure whether Claimant's November 2001 injury aggravated and/or exacerbated his condition. (EX. 19, p. 63). According to Dr. Kinnett, Claimant's August 2000 and November 2001 incidents may have

contributed to the failure of the total wrist. (CX. 22, pp. 16-17). Since Dr. Kinnett discovered the fracture of the dorsal aspect of the long finger right after the August 2000 incident, he thought it was more probable than not that this incident contributed to the failure of the total wrist, but he did not have enough information on the November 2001 incident to make the same determination. (CX. 22, p. 17).

Dr. Kinnett offered the arthrodesis as a treatment option ever since he initially evaluated Claimant, although Claimant did not elect to proceed with the arthrodesis until after the November 2001 incident. (CX. 22, pp. 53, 59, 67). Dr. Kinnett did not know whether or not Claimant would have elected to proceed with the arthrodesis if the November 2001 incident had not occurred. (CX. 22, pp. 63-64, 66). Dr. Kinnett had no personal knowledge as to whether Claimant's decision on when to proceed with the arthrodesis had anything to do with his workload. (CX. 22, p. 68).

Deposition of R.A. Graham, M.D.

Dr. Graham is an orthopedic surgeon who reviewed Claimant's medical records related to his wrist injury and subsequent treatment from 1998 through 2003, including the medical records for Claimant's various surgical procedures. (AI Ex. 2, pp. 6-8, 14). He also read Dr. Kinnett's deposition and was familiar with Dr. Kinnett's opinions. (AI Ex. 2, p. 20). Dr. Graham has never examined Claimant's x-rays, nor has he ever met or physically examined Claimant. (AI Ex. 2, p. 19). He testified that Claimant's wrist implant failed distally at the bone cement interface. (AI Ex. 2, p. 9). In this phenomenon, the stress on the bone is transferred to the tip of the prosthesis as the bone resorbs, resulting in a pathologic fracture of the bone. (AI Ex. 2, p. 9). This occurrence indicates that the wrist prosthesis has become loose and is no longer helpful to the patient. At that point, the prosthesis must be removed because of the resulting pain. According to Dr. Graham, loosening in wrist prostheses is predictable.

In Dr. Graham's opinion, based on his age and occupation, Claimant should not have had a prosthesis implanted in 1989. Dr. Graham noted several episodes involving Claimant's wrist from 1988 through 2003, but he did not believe that any of these episodes constituted a new injury. Instead, Dr. Graham opined that Claimant's episodes produced symptomatology caused by the progressive resorption of bone from a cemented implant. (AI Ex. 2, p. 10). According to Dr. Graham, a wrist implant might last for a number of years, but a sedentary job is mandatory for the implant, which will fail in a manual laborer like Claimant. (AI Ex. 2, p. 11). He agreed that a manual labor that puts high stress on the wrist in the joint will cause a higher amplitude of damage and deterioration to a wrist joint than sedentary work would do. (AI Ex. 2, p. 25). Use of a sledgehammer, running a grinder, loading pipe on a truck and pulling on wrenches are all examples of this type of manual labor. (AI Ex. 2, p. 35). Dr. Graham testified that Claimant had some range of motion with the wrist implant but not a full and normal range of motion; he acknowledged, however, that he did not know the extent of Claimant's range of motion during this time. (AI Ex. 2, p. 28).

When asked the significance of Claimant's x-rays from 1997, February 2000 and August 2000, which all showed a fracture of the third metacarpal, Dr. Graham explained that the broken bone did not heal because of the failure of the bone interface. (AI Ex. 2, p. 30). He affirmed that the ongoing presence of the fracture would generate pain symptoms in a patient. (AI Ex. 2, p. 32).

According to Dr. Graham, the wrist fusion performed by Dr. Kinnett in 2002 was "the natural result of the original implant at the age and occupation that it was implanted" and was not casually related to the 1996, 2000 and 2001 incidents. (AI Ex. 2, p. 11). Dr. Graham believed that the arthrodesis should last Claimant throughout his working career because "once you stop the motion, you stop the pain." (AI Ex. 2, p. 12). When the wrist is fused, the patient loses range of motion, including flexion and extension of the wrist, radial deviation and ulnar deviation. (AI Ex. 2, p. 26). While the fusion does not typically interfere with grip, abduction of the fingers or extension of the fingers, someone with a fused wrist would have difficulty using tools such as screwdrivers, jack hammers and fine instruments. (AI Ex. 2, pp. 26-27).

Dr. Graham acknowledged that Dr. Kinnett placed Claimant at MMI in August 1991 and that Claimant was pain-free at that point, but he explained that these findings, when placed in context, indicated that at that moment in time, Claimant had secure fixation of the prosthesis and had reached maximum motion. (AI Ex. 2, pp. 20-21). According to Dr. Graham, notwithstanding these findings, the body would still resorb the bone from the heat of the cement setting up and the wrist prosthesis would fail. (AI Ex. 2, p. 21).

Dr. Graham assigned Claimant a permanent partial disability rating of twenty-eight percent impairment to the upper extremity, with a seventeen percent impairment to the whole body. (AI Ex. 2, p. 13). This disability rating, which was based on the AMA guidelines, was attributed to Claimant's original 1988 work-related accident. (AI Ex. 2, pp. 12-13, 15). Dr. Graham did not assign a disability rating to Claimant's thumb because he would need to evaluate the thumb in order to do so. (AI Ex. 2, p. 27).

In Dr. Graham's opinion, Claimant has needed to undergo a fusion ever since the 1988 accident and it was inevitable that he would have to undergo this procedure at some point. (AI Ex. 2, pp. 15-16, 18-19, 38-39). Dr. Graham affirmed that Claimant's continued performance of manual labor hastened the failure of his prosthesis. (AI Ex. 2, p. 17). He agreed that Dr. Kinnett's records indicated that he had warned Claimant on numerous occasions that his wrist would fail if he continued to engage in heavy manual labor. (AI Ex. 2, p. 38). Dr. Graham testified that if Claimant had put off undergoing the fusion because of his work schedule, "it would explain his personal reason for doing so." (AI Ex. 2, p. 36).

When asked to differentiate between AMA guidelines and American Academy of Orthopedic Surgeons guidelines for impairment ratings, Dr. Graham explained that the

AMA guidelines are “extremely objective.” The patient’s loss of motion is measured and compared to a series of tables to assign an impairment rating. The American Academy of Orthopedic Surgeons ratings are weighted differently because they focus more on what activities the patient can and cannot do. (AI Ex. 2, p. 29).

IV. DISCUSSION

In arriving at a decision in this matter, it is well-settled that the fact-finder is entitled to determine the credibility of the witnesses, weigh the evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular medical examiner. Todd Shipyards v. Donovan, 200 F.2d 741 (5th Cir. 1962); Atlantic Marine, Inc. and Hartford Accident & Indem. Co. v. Bruce, 666 F.2d 898, 900 (5th Cir. 1981); Banks v. Chicago Grain Trimmers Ass’n, Inc., 390 U.S. 459, 467, reh’g denied, 391 U.S. 928 (1968). It has been consistently held that the Act must be construed liberally in favor of the claimants. Voris v. Eikel, 346 U.S. 328, 333 (1953); J.B. Vozzolo, Inc. v. Britton, 377 F.2d 144 (D.C. Cir. 1967).

However, the United States Supreme Court has determined that the “true-doubt” rule, which resolves factual doubt in favor of the claimant when evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d), which specifies the proponent of a rule or position has the burden of proof. Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994), aff’g 990 F.2d 730 (3d Cir. 1993).

Credibility

An administrative law judge has the discretion to determine the credibility of witnesses. Furthermore, an administrative law judge may accept a claimant’s testimony as credible, despite inconsistencies, if the record provides substantial evidence of the claimant’s injury. Kubin v. Pro-Football, Inc., 29 BRBS 117, 120 (1995); see also Plaquemines Equip. & Mach. Co. v. Newman, 460 F.2d 1241, 1243 (5th Cir. 1972).

Claimant traveled extensively during his years of working for Employer. Consequently, he could not always remember where he was on a certain date. While Carrier AI and Carrier C & I have pointed out inconsistencies in Claimant’s recollection and description of the alleged events of August 1, 2000 and November 5, 2001, Claimant satisfactorily addressed these issues during his hearing testimony, both on direct and on cross-examination. I found Claimant in this case to be a very credible witness and I have weighed his testimony accordingly.

Timely Notice of Injury

Section 12(a) of the Act provides that notice of an injury or death for which compensation is payable must be given within thirty days after injury or death, or within

thirty days after the employee or beneficiary is aware of, or in the exercise of reasonable diligence or by reason of medical advice should have been aware of, a relationship between the injury or death and the employment. It is the claimant's burden to establish timely notice.

Failure to provide timely notice as required by Section 12(a) bars the claim, unless excused under Section 12(d). Under Section 12(d), failure to provide timely written notice will not bar the claim if the claimant shows either that the employer had knowledge of the injury during the filing period (Section 12(d)(1)) or that the employer was not prejudiced by the failure to give timely notice (Section 12(d)(2)). See Addison v. Ryan-Walsh Stevedoring Co., 22 BRBS 32, 34 (1989); Sheek v. General Dynamics Corp., 18 BRBS 151 (1986). Prejudice is established where the employer demonstrates that due to the claimant's failure to provide timely written notice, it was unable to effectively investigate to determine the nature and extent of the alleged illness or to provide medical services. Strachan Shipping Co. v. Davis, 571 F.2d 968, 972, 8 BRBS 161 (5th Cir. 1978); White v. Sealand Terminal Corp., 13 BRBS 1021 (1981). Where the employer has knowledge of a work-related accident but does not have knowledge of the resulting injury, the employer will be deemed not to have knowledge of a work-related accident under Section 12(d). Kulick v. Continental Baking Corp., 19 BRBS 115 (1986).

The date of a medical diagnosis, although significant, is not always controlling. It does not exclude a finding that claimant knew or should have known of the relationship between his injury and his employment at an earlier date. On the other hand, one physician's unconfirmed diagnosis is not sufficient to make the claimant reasonably aware of a loss of wage-earning capacity in light of a contrary, though wrong, diagnosis by the claimant's treating physician and the claimant's continued ability to perform his work. Gregory v. Southeastern Maritime Co., 25 BRBS 188 (1991). The relevant inquiry is the date of awareness of the relationship among the injury, employment and disability. Swanigan v. Maersk Pac. Ltd., 35 BRBS 23 (ALJ) (2001) (citing Thorud v. Brady-Hamilton Stevedoring Co., 18 BRBS 232 (1986)).

Carrier AI and Carrier C & I argue that Claimant failed to give timely notice of his August 1, 2000 and November 5, 2001 injuries, respectively, and that his claim for compensation as related to each injury is therefore time-barred. Each injury will be examined in turn to determine whether Claimant gave timely notice, and if not, whether his failure to do so is excused under § 12(d).

August 1, 2000 Injury

Claimant testified that he informed Mr. Yates of this injury soon after it occurred. Although Mr. Yates does not recall ever hearing of the injury before he received official notice from the Department of Labor in June 2003, I found Claimant to be a credible witness and give him the benefit of the doubt in this situation. Even if Claimant had not

provided timely notice of this injury to Employer, however, Employer was already aware of Claimant's wrist condition and further, Employer was not prejudiced by the failure to give timely notice. Carrier AI has failed to provide any evidence to show that it was unable to effectively investigate to determine the nature and extent of Claimant's injury or to provide medical services for him. On the contrary, Mr. Yates has testified that he was aware of Claimant's wrist problem when he hired him. Mr. Yates also knew that Claimant had difficulties with his wrist off and on throughout the years of his employment with the company, and in fact, Employer eventually provided a full-time helper to Claimant so he could avoid some of the heavier duty labor on the job. In addition, Mr. Yates was aware that Claimant's condition was worsening over time. Moreover, Employer, through one of its carriers, continued to pay Claimant's medical expenses related to his wrist condition. Clearly, Employer was aware of the deterioration of Claimant's physical condition even if Claimant never told Mr. Yates specifically about the August 1, 2000 incident. Even assuming that Mr. Yates did not receive notice of this injury until June 2003, I find that Employer was aware of the deterioration in Claimant's condition and was not prejudiced by Claimant's failure to provide timely notice of the August 1, 2000 injury, and thus Claimant's claim for compensation related to this injury is not time-barred under § 12 of the Act.

November 5, 2001 Injury

Claimant acknowledged that he did not recall whether he informed Mr. Yates of this injury. Mr. Yates likewise testified that he had no personal knowledge of this injury at the time, as he was out of town when the incident occurred. Although it is less clear in this situation whether Claimant gave timely notice of this injury, Carrier C & I has failed to show that Employer was prejudiced by his failure to do so. As previously noted, Mr. Yates was aware that Claimant's condition was deteriorating. In addition, Claimant told Mr. Yates and Mr. Keary after the November 2001 incident that he had decided to undergo a fusion on his wrist. Certainly, Claimant's decision to undergo this procedure put Employer on notice as to the status of Claimant's wrist condition at that point in time. One of Employer's carriers continued to pay Claimant's medical expenses up to and including the March 2002 wrist fusion surgery. Employer was therefore never denied an opportunity to participate in Claimant's care, even though the identity of the responsible carrier was later disputed. I find that even if Claimant did not provide timely notice of the November 5, 2001 injury, Employer was aware of the deterioration in his condition and was not prejudiced by any failure to give timely notice. Accordingly, Claimant's claim for compensation related to the November 5, 2001 injury is not time-barred under § 12 of the Act.

Statute of Limitations

Section 13(a) of the Act provides:

(a) Except as otherwise provided in the section, the right to compensation for disability or death under this Act shall be barred unless the claim is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. . . . The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

33 U.S.C. § 13(a). In this case, Carrier St. Paul paid temporary total disability benefits for Claimant from March 19, 2002, the date of his fusion surgery, until September 15, 2002. In addition, St. Paul had paid all previous compensation and medical expenses relating to Claimant's September 25, 1996 wrist injury. On August 2, 2002, Claimant filed an LS-203 claim for compensation in which he described the incident which occurred on August 1, 2000, but mistakenly dated this event as having occurred in December 2001. St. Paul suspended payment of benefits in September 2002 when it learned of Claimant's claim for compensation for the two subsequent work-related injuries of August 2000 and November 2001.

The Court later granted Claimant leave to file a supplemental and amending LS-203 to include the proper dates and descriptions of the August 1, 2000 and November 5, 2001 incidents. The amended complaint was filed on June 25, 2003. Clearly, both the initial claim from August 2, 2002 and the June 25, 2003 claim were made within one year of Claimant's last payment of compensation from St. Paul. I find that Claimant's claims for compensation were filed within the applicable statutory period and thus are not time-barred under § 13(a) of the Act.

Causation

Section 20(a) of the Act provides the claimant with a presumption that his disabling condition is causally related to his employment if he shows he suffered a harm and employment conditions existed which could have caused, aggravated or accelerated the condition. Gencarelle v. General Dynamics Corp., 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989). Once the claimant proves these elements, the claimant has established a prima facie case and is entitled to a presumption that the injury arose out of the employment. Kelaita v. Triple Machine Shop, 13 BRBS 326 (1981); Adams v. General Dynamics Corp., 17 BRBS 258 (1985). With the establishment of a prima facie case, the burden shifts to the employer to rebut the presumption with substantial countervailing evidence. James v. Pate Stevedoring Co., 22 BRBS 271 (1989). If the presumption is rebutted, the administrative law judge must

weigh all the evidence and render a decision supported by substantial evidence. Del Vecchio v. Bowers, 296 U.S. 280 (1935).

An injury occurs when something unexpectedly goes wrong within the human frame. Wheatley v. Adler, 407 F.2d 307 (D.C. Cir. 1968). An external, unforeseen incident is not necessary; experiencing back pain or chest pain at work can be sufficient. Darnell v. Bell Helicopter Int'l Inc., 16 BRBS 98 (1984). If an employment-related injury contributes to, combines with or aggravates a pre-existing disease or underlying condition, the entire resultant condition is compensable. The relative contributions of the work-related injury and prior condition are not weighted in determining Claimant's entitlement ("aggravation rule"). Wheatley, 407 F.2d at 307.

Once the presumption is invoked, the burden shifts to the employer to rebut the presumption by presenting substantial countervailing evidence that the injury was not caused by the employment. See 33 U.S.C. § 920(a). The Fifth Circuit addressed the issue of what an employer must do in order to rebut a Claimant's prima facie case in Conoco v. Director, OWCP, 194 F.3d 684 (5th Cir. 1999). In that case, the Fifth Circuit held that to rebut the presumption, an employer does not have to present specific and comprehensive evidence ruling out a causal relationship between the claimant's employment and his injury. Rather, to rebut a prima facie presumption of causation, the employer must present substantial evidence that the injury is not caused by the employment. Noble Drilling v. Drake, 795 F.2d 478 (5th Cir. 1986), cited in Conoco, 194 F.3d at 690.

As a result of a successful rebuttal of the presumption by the employer, the fact finder must evaluate the record evidence as a whole in order to resolve the issue of whether or not the claim falls within the Act. Del Vecchio v. Bowers, 296 U.S. 280 (1935); Volpe v. Northeast Marine Terminals, 671 F.2d 697 (2d Cir. 1982). I must weigh all the evidence in the record and render a decision supported by substantial evidence. See Del Vecchio, 296 U.S. 280 (1935).

The parties have stipulated to the occurrence of a work-related injury on September 25, 1996. Since the occurrence of the August 2000 and November 2001 accidents has been disputed, I must examine each of these alleged incidents in turn to determine whether causation exists.

August 1, 2000 Incident

Claimant testified that he was pulling on a flange while working in Beaufort, South Carolina, when he felt a pop and some pain in his right wrist. Claimant reported the incident to Mr. Yates and told him that he needed to see the doctor when he returned home. Claimant told his wife about the incident as well. Claimant made an appointment with Dr. Kinnett and described the incident. Dr. Kinnett determined that Claimant's

prosthesis had broken away from the bone. I find that Claimant has satisfied the two-prong test of establishing that an injury occurred and that the injury was caused by his employment. He is therefore entitled to the § 20(a) presumption with respect to the August 1, 2000 incident.

Carrier AI disputes that this incident ever occurred. AI argues that there is no evidence other than Claimant's testimony to support his claim of injury on the day in question, and AI further argues that Claimant is not a credible witness. AI cites the testimony of Mr. Farmer, who worked as Claimant's helper during the time period in question but did not recall Claimant ever telling him about a pop in his wrist. In addition, Mr. Yates, in a direct contradiction of Claimant's testimony, testified that Claimant never told him about the injury and that he only learned of it in June 2003. I find that AI has rebutted the § 20(a) presumption as to the occurrence of an injury on August 1, 2000, and I must now evaluate the record as a whole to determine whether this injury occurred.

First, contrary to AI's claim that there is no evidence to support Claimant's testimony as to his injury on August 1, 2000, his testimony is corroborated both by Mrs. Braxton's testimony and by Dr. Kinnett's deposition testimony. Having already found Claimant to be a credible witness, the Court is unconcerned by the fact that he was confused as to when and where the accident occurred, particularly since the testimony of both Mrs. Braxton and Dr. Kinnett corroborates his version of how and when the accident occurred. I also note that Claimant has nothing to gain from inventing any new accident or injury. Employer is responsible for benefits regardless and the issue of whether an accident occurred only affects which carrier is liable for payment of those benefits. While Mr. Yates testified that he had no knowledge of Claimant's August 1, 2000 injury until June 2003, he also testified that Claimant was aware of Employer's safety policy and had reported accidents to him on some occasions. Because I found Claimant to be a credible witness, I believe that he did tell Mr. Yates about the incident, even if Mr. Yates did not remember being told. Although Mr. Farmer testified that he did not recall any specific incident in which Claimant hurt his wrist, he did know that Claimant had a sore wrist and had made an appointment with the doctor because his hand was sore. In addition, Dr. Kinnett found objective evidence of an injury to Claimant's wrist when Claimant saw him several days after the August 1, 2000 incident. Based on a review of all the evidence, I find that causation exists as to the August 1, 2000 injury.

November 5, 2001 Incident

Claimant testified that he sustained a work-related accident on this date in Chalmette, Louisiana. Claimant was working on some scaffolding while wearing a safety harness when he caught his foot in the harness and slipped. He grabbed the handrail and felt a pain in his hand. Claimant went to Dr. Kinnett two days later, complaining of right hand and wrist pain. He described his workplace accident. Dr. Kinnett found a small mass over the base of Claimant's long finger metacarpal, pain on palpation and weakness

of power grasp. Based on Claimant's testimony and the testimony of Dr. Kinnett, Claimant has met the two-prong test of the prima facie case and is entitled to the § 20(a) presumption of causation with respect to the November 5, 2001 incident.

Carrier C & I argues that the weight of the evidence suggests that Claimant may not have even suffered a slip and fall accident on the day in question. C & I cites Claimant's confusion about when and where the incident occurred. C & I also points out that Mr. Yates testified that Claimant never told him about the incident and that Mrs. Braxton did not testify about any incident occurring in or around November 2001. Finally, C & I notes that unlike Claimant's other work-related injuries, Claimant did not describe the slip and fall to Dr. Kinnett in any great detail. I find that C & I has rebutted the § 20(a) presumption as to the occurrence of an injury on November 5, 2001, and I must now evaluate the record as a whole to determine whether this injury occurred.

Again, Claimant's confusion as to the time and place of this incident does not undermine his credibility as a witness, particularly in light of the fact that he constantly traveled on the job. Claimant testified that he did not remember reporting the incident to Mr. Yates, so Mr. Yates' testimony on this issue does not contradict Claimant's own version of events. It is also notable that Mr. Yates was out of town on November 5, 2001, so regardless of whether or not the incident occurred, Claimant could not have reported it to Mr. Yates at that time. Finally, Claimant's general description of the incident to Dr. Kinnett is sufficient to establish that he did suffer a work-related injury on the day in question, since Claimant is a credible witness and Dr. Kinnett's medical records, dated two days after the incident, both indicate the work-related slip and fall and contain objective findings as to Claimant's right hand pain. Based on a review of all the evidence, I find that causation exists as to Claimant's November 5, 2001 injury.

Nature and Extent

Having established work-related injuries, the burden rests with the claimant to prove the nature and extent of his disability, if any, from those injuries. Trask v. Lockheed Shipbldg. Constr. Co., 17 BRBS 56, 59 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). James v. Pate Stevedoring Co., 22 BRBS 271, 274 (1989); Trask, 17 BRBS at 60. Any disability before reaching MMI would thus be temporary in nature. The date of MMI is a question of fact based upon the medical evidence of record. Ballestros v. Willamette W. Corp., 20 BRBS 184 (1988); Williams v. General Dynamics Corp., 10 BRBS 915 (1979). An employee reaches MMI when his condition becomes stabilized. Cherry v. Newport News Shipbldg. & Dry Dock Co., 8 BRBS 857 (1978); Thompson v. Quinton Enter., Ltd., 14 BRBS 395 (1981).

The parties in this case have stipulated that Claimant reached MMI on December 9, 2002, but the percentage of disability has been disputed.

As a general rule, if an injury occurs to a body part specified in the statutory schedule, then the injured employee is limited to the permanent partial disability schedule of payments contained in Section 908(c)(1) through (20). The rule that the schedule of payments is exclusive in cases where the scheduled injury, limited in effect to the injured part of the body, results in a permanent partial disability was thoroughly discussed by the Supreme Court in Potomac Elec. Power Co. v. Director, OWCP, 449 U.S. 268 (1980) [hereinafter “PEPCO”]. Where an injury occurs to a larger member (such as an arm) and impairs the smaller connected member (such as a hand), the judge cannot issue separate permanent partial disability awards for a claimant’s arm and hand and should award permanent partial disability benefits for the loss of use of the arm. Mason v. Baltimore Stevedoring Co., 22 BRBS 413, 416-17 (1989).

A scheduled injury can give rise to permanent total disability pursuant to § 908(a) in a situation where the facts show that the injury prevents a claimant from engaging in the only employment for which he is qualified. PEPCO, 449 U.S. at 277 n.17. Therefore, if a claimant establishes that he is totally disabled, the schedule becomes irrelevant. Dugger v. Jacksonville Shipyards, 8 BRBS 552 (1978), aff’d 587 F.2d 197 (5th Cir. 1979).

In this case, it is undisputed that Claimant is not totally disabled. Claimant has returned to his former employment, although he no longer works for Employer. Thus, any award to which Claimant may be entitled shall be determined under the schedule. When Claimant was first placed at MMI in 1991, Dr. Kinnett assigned him a permanent partial disability impairment rating of thirty percent to the right upper extremity. When Claimant reached MMI after his wrist fusion in 2002, Dr. Kinnett assigned Claimant a permanent partial disability impairment rating of forty-five percent to the right hand under American Academy of Orthopedics guidelines. Dr. Kinnett later converted this rating to thirty percent impairment to the right arm and thirteen percent impairment to the right thumb under the AMA guidelines.

Dr. Graham, who did not examine Claimant, assigned Claimant a permanent partial disability impairment rating of twenty-eight percent to the upper extremity, with a seventeen percent whole body impairment under the AMA guidelines. Dr. Graham was unable to assign a disability rating to Claimant’s thumb because he never personally evaluated Claimant.

As the Benefits Review Board has noted, “The Act does not require adherence to any particular guide or formula,” and an administrative law judge is not bound by a doctor’s opinion, nor is he bound to apply the AMA Guides or any other particular formula for measuring disability. Mazze v. Frank J. Holleran, Inc., 9 BRBS 1053, 1055 (1978). Because Claimant has no movement in his wrist now that he has undergone a fusion procedure, it is clear that his disability rating has not remained the same since Dr.

Kinnett first assigned a thirty percent right upper extremity impairment in 1991. Dr. Graham's opinion to the contrary does not persuade the Court, particularly in light of the fact that Dr. Graham has never examined Claimant and thus his evaluation is based solely upon his opinion of the findings contained in Dr. Kinnett's medical records. Dr. Kinnett, who has treated Claimant's wrist condition for over a decade, is in the best position to evaluate Claimant's current disability, particularly in comparison to Claimant's disability rating once he reached MMI after his first total wrist arthroplasty. I find no reason to disturb Dr. Kinnett's opinion on this issue. I find that Claimant has a forty-five percent impairment to his right hand based upon the American Academy of Orthopedics Manual's guidelines for assigning impairment ratings. This percentage best takes into account the combined impairments to Claimant's right wrist and to his right thumb following his wrist fusion surgery. Accordingly, I find that the responsible carrier shall pay Claimant permanent partial disability compensation for his scheduled right hand injury of forty-five percent in accordance with Sections 8(c)(3) and (19) of the Act, beginning January 1, 2003.

Responsible Carrier

Under the Act, rules for allocating liability among insurance carriers follow the rules allocating liability among employers. The carrier on the risk when the employer's liability attaches is responsible. Although the primary issue in a case may be that of determining the responsible employer, any issues related to insurance contracts are ancillary and can be addressed. Schaubert v. Omega Services Indus., 32 BRBS 233 (1998).

In occupational disease or cumulative injury cases where exposure to injurious conditions occurred in the service of a last responsible employer who was covered by multiple insurers, the last carrier during the exposure period is the responsible carrier. Liberty Mut. Ins. Co. v. Commercial Union Ins. Co., 978 F.2d 750, 752 (1st Cir. 1992); Argonaut Ins. Co. v. Patterson, 846 F.2d 715, 718 (11th Cir. 1988); Travelers Ins. Co. v. Cardillo, 225 F.2d 137 (2d Cir. 1955); cert. denied, 350 U.S. 913 (1955); Perry v. Jacksonville Shipyards, Inc., 18 BRBS 219, 221 (1986); Warren v. Jacksonville Shipyards, Inc., 1 BRBS 184, 187 (1974).

By providing compensation insurance under the Act, the insurer becomes bound for the full obligation which the insured employer incurs for any injury which occurs when the carrier is on the risk. Adam v. Nicholson Terminal & Dry Dock Co., 14 BRBS 735, 738 (1981); Crawford v. Equitable Shipyards, Inc., 11 BRBS 646, 649-50 (1979), aff'd per curiam sub nom. Employers Nat'l Ins. Co. v. Equitable Shipyards Co., 640 F.2d 383 (5th Cir. 1981); 33 U.S.C. § 935; 20 C.F.R. § 703.115. The last carrier cannot avoid liability on grounds that the claimant's condition existed while a prior carrier was on the risk. Todd v. Todd Shipyards Corp., 16 BRBS 163 (1984).

The aggravation or two-injury rule is:

If the disability resulted from the natural progression of a prior injury and would have occurred notwithstanding the subsequent injury, then the prior injury is compensable and accordingly, the prior employer is responsible. If, on the other hand, the subsequent injury aggravated, accelerated or combined with the claimant's prior injury, thus resulting in claimant's disability, then the subsequent injury is the compensable injury, and the subsequent employer is responsible.

Foundation Constructors v. Director, OWCP, 950 F.2d 621, 624 (9th Cir. 1991) (quoting Kelaita v. Director, OWCP, 799 F.2d 1308, 1311 (9th Cir. 1986)); Strachan Shipping Co. v. Nash, 782 F.2d 513 (5th Cir. 1986) (en banc), aff'd 751 F.2d 1460 (5th Cir. 1985), aff'd 15 BRBS 386 (1983); Crawford v. Equitable Shipyards, Inc., 11 BRBS 646, 649-650 (1979), aff'd per curiam sub nom. Employers Nat'l Ins. Co. v. Equitable Shipyards, 640 F.2d 383 (5th Cir. 1981). The aggravation rule applies to discrete successive accidental injuries or aggravating episodes. Liability in such cases attaches when the last injury or aggravating incident occurs. See Strachan, 732 F.2d 513.

In Buchanan v. International Transp. Serv., 31 BRBS 81 (1997), the Board held that an employer "may be relieved of liability for disability and/or medical benefits in a two-injury case by establishing that a subsequent work-related injury aggravated the employee's condition." It stated the following:

In this case . . . [Employer I] bears the burden of proving, without benefit of . . . a presumption . . . by a preponderance of the evidence that there was a new injury or aggravation with [Employer II] in order to be relieved of its liability as responsible operator. (Citations omitted.) [Employer II], on the other hand, must prove that claimant's condition is the result of the injury with [Employer I] in order to escape liability. A determination as to which employer is liable requires that the administrative law judge weigh the evidence.

In any successive injury case, the basic question which must be faced is whether the disability was caused solely by the first injury and its "natural progression," or is due to the combined effect of the first injury, its "natural progression," and the later aggravation.

The last aggravation need not be the primary contributing factor to the resulting disability. Independent Stevedore Co. v. O'Leary, 357 F.2d 812 (9th Cir. 1966); Lopez

v. Southern Stevedores, 23 BRBS 295, 297 (1990). Nor does the last aggravation need to interact with the pre-existing underlying condition itself to produce a worsening of the underlying impairment. It is enough that the last aggravation combined with the underlying condition merely in an additive way and resulted in greater overall impairment. The last employer is liable for the overall impairment regardless of whether the underlying condition was industrially caused. Port of Portland v. Director, OWCP, 932 F.2d 836, 839 (9th Cir. 1991).

Having found that there is a causal relationship between Claimant's employment and each of the three injuries in question, the Court must determine whether Claimant's current disability is a result of the natural progression of his initial wrist injury of 1988 or whether Claimant's successive injuries of August 2000 and November 2001 aggravated his condition such that either Carrier AI or Carrier C & I, as the carriers on the risk during the relevant time periods, will be responsible for payment of compensation benefits.

In this case, Claimant sustained three separate work-related injuries while working for Employer, during which time three different carriers were on the risk. It is clear from the testimonial evidence that Claimant's condition continued to deteriorate over time. Dr. Kinnett testified that he told Claimant on many occasions over his years of treatment, including before the August 2000 and November 2001 injuries, that he should consider an arthrodesis of the right wrist. Claimant agreed that he was aware that he needed a wrist fusion before September 15, 2001, the date when Carrier C & I became the responsible carrier. He testified that he waited so long to undergo the fusion because of his hectic workload. Dr. Kinnett opined that Claimant's total wrist arthroplasty failed because of factors including time, activity level, recurrent loading and fracture of the supporting bones of one component. Dr. Graham, who reviewed Dr. Kinnett's deposition and records, opined that Claimant's current permanent partial disability impairment is a result of the natural progression of his initial wrist injury in 1988. According to Dr. Graham, the failure of Claimant's total wrist arthroplasty was simply a matter of time, and his eventual need for an arthrodesis was inevitable. Based on this evidence, Carrier C & I argues that Claimant's need for a wrist fusion was a result of the natural and unavoidable progression of his original injury in 1988.

Based on the medical and testimonial evidence, it is clear that at the very least, Claimant suffered an aggravation when he felt his wrist pop on August 1, 2000. After that injury, Dr. Kinnett discovered that Claimant's prosthesis had broken away at the bone. In addition, Claimant began to notice more pain and swelling in his hand and also experienced cramping and cold sensations. Mrs. Braxton affirmed that Claimant had more difficulties after the wrist popping incident and began to handle his wrist differently. Dr. Kinnett testified that it was more probable than not that the August 2000 incident contributed to the failure of Claimant's total wrist arthroplasty. I find that

Claimant suffered a compensable aggravation on August 1, 2000, when Carrier AI was on the risk.

However, Carrier AI will not be the responsible carrier under the last responsible employer/carrier rule if the November 5, 2001 injury also contributed to or aggravated Claimant's wrist condition, as Claimant and Carriers AI and St. Paul each argue. The evidence as to this injury is somewhat less clear. Claimant did sustain a slip and fall on the day in question, shortly after which he saw Dr. Kinnett, who determined that Claimant had a small mass over the base of one of his fingers as well as pain on palpation and weakness of power grasp. However, Dr. Kinnett was unable to say whether or not the incident was a minor exacerbation and could only confirm that "it was another incident involving [Claimant's] wrist." While Claimant finally decided to undergo the wrist fusion after this incident, he admitted that he had known for some time that the procedure would need to be done eventually. However, Dr. Kinnett did not know whether Claimant would have decided to proceed with the fusion had this incident not occurred. Dr. Kinnett testified that the November 2001 incident may have contributed to the failure of Claimant's total wrist arthroplasty but he did not have enough information on the incident to say for certain whether it was more probable than not that it was a contributing factor. As for Dr. Graham, he did not believe that any of the work-related episodes involving Claimant's wrist, including the November 2001 incident, constituted a new injury.

While the medical and testimonial evidence is somewhat unclear as to how much of an aggravation was caused by the November 2001 injury, the evidence does indicate that something happened on that day which made Claimant's pain worse. Claimant went to Dr. Kinnett because he felt increased pain in his hand after the slip and fall. Dr. Kinnett found a mass in Claimant's finger which had not been there before. The mass caused Claimant's finger to swell. These are objective findings which indicate that the slip and fall did aggravate Claimant's already existing hand and wrist pain. In addition, Claimant returned to Dr. Kinnett in January 2002, continuing to complain of persistent wrist pain and expressing concern about the mass over his finger. There is no evidence to indicate that this condition ever resolved before Claimant underwent the arthrodesis, and thus it cannot be said that it simply constituted a temporary exacerbation rather than a compensable aggravation. As previously stated, Dr. Graham's opinion is accorded less weight because he did not actually evaluate or treat Claimant before offering his conclusions as to the origins of Claimant's need for a wrist fusion. Finally, the fact that Claimant already knew that he needed a wrist fusion is irrelevant to the question of whether he sustained an exacerbating injury to his wrist on November 5, 2001.

In sum, regardless of whether Claimant had already needed a wrist fusion a year or two years before the November 2001 incident, he still suffered an injury on November 5 which made his pain worse and caused further damage to his right hand. As the case law points it, it is largely beside the point whether the aggravation was severe or slight.

Rather, the issue is whether the November 5, 2001 injury combined with Claimant's underlying wrist condition in an additive way, resulting in greater impairment, and in this case, Dr. Kinnett affirmed that at the very least, Claimant sustained another trauma to his wrist as a result of the slip and fall. Based on Claimant's testimony and Dr. Kinnett's medical records, I find that Claimant did sustain a compensable aggravation on November 5, 2001. Consequently, I find that Carrier C & I is the responsible carrier because this final aggravating injury occurred while C & I was on the risk.

Average Weekly Wage

Sections 10(a) and 10(b) are the statutory provisions relevant to a determination of an employee's average annual wages where an injured employee's work is permanent and continuous. Duncan-Harrelson Co. v. Director, OWCP, 686 F.2d 1336, 1342 (9th Cir. 1982), vacated in part on other grounds, 462 U.S. 1101 (1983). The computation of average annual earnings must be made pursuant to subsection (c) if subsections (a) or (b) cannot be reasonably and fairly applied. 33 U.S.C. § 910. Section 10(a) applies where an employee "worked in the employment . . . whether for the same or another employer, during substantially the whole of the year immediately preceding" the injury. 33 U.S.C. § 910(a); Empire United Stevedores v. Gatlin, 936 F.2d 819, 25 BRBS 26 (CRT) (5th Cir. 1991); Duncan v. Washington Metro. Area Transit Auth., 24 BRBS 133, 135-136 (1990); Mulcare v. E.C. Ernst, Inc., 18 BRBS 158 (1986). Section 10(b) applies to an injured employee who worked in permanent or continuous employment, but did not work for "substantially the whole of the year" prior to injury. Gatlin, 936 F.2d at 21, 25 BRBS at 28 (CRT); Duncan-Harrelson, 686 F.2d at 1341; Duncan, 24 BRBS at 135; Lozupone v. Lozupone & Sons, 12 BRBS 148, 153 (1979).

When there is insufficient evidence in the record to make a determination of average weekly wage (AWW) under either subsection (a) or (b), subsection (c) is used. Todd Shipyards Corp. v. Director, OWCP, 545 F.2d 1176, 5 BRBS 23, 25 (9th Cir. 1976), aff'g and remanding in part 1 BRBS 159 (1974); Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 104 (1991); Lobus v. I.T.O. Corp., 24 BRBS 137 (1991); Taylor v. Smith & Kelly Co., 14 BRBS 489 (1981). Subsection (c) is also used whenever subsections (a) and (b) cannot reasonably and fairly be applied and therefore do not yield an average weekly wage that reflects the claimant's earning capacity at the time of the injury. Empire United Stevedores v. Gatlin, 936 F.2d 819, 25 BRBS 26 (CRT) (5th Cir. 1991); Walker v. Washington Metro Area Transit Auth., 793 F.2d 319 (D.C. Cir. 1986), cert. denied, 479 U.S. 1094 (1987); Browder v. Dillingham Ship Repair, 24 BRBS 216, 218 (1991).

Having found that Carrier C & I is responsible for payment of Claimant's disability benefits resulting from the November 5, 2001 injury, the Court must determine

Claimant's average weekly wage at the time of that injury.⁴ Since Claimant worked substantially the whole of the year preceding his November 5, 2001 injury, § 10(a) would appear to provide the appropriate method for calculating his average weekly wage. However, since there is no evidence in the record as to whether Claimant was a six day or a five day worker, I find that § 10(c) provides the most accurate measure of his average weekly wage.

Claimant has calculated his average weekly wage under § 10(c) by dividing his total earnings for the year before his November 2001 injury by fifty-two. Thus, because Claimant earned \$38,815.20⁵ during the relevant time period, his average weekly wage is \$746.45, with a corresponding compensation rate of \$497.88. I find that this calculation most accurately represents Claimant's AWW during the relevant time period, as the wage records indicate that, in addition to receiving a \$3,000 bonus, Claimant was paid \$746.06 each week that he worked during that time with the exception of one week during which Claimant earned \$750.38.

Medical Expenses

Section 7 of the Act provides in pertinent part: "The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). In order to assess medical expenses against an employer, the expenses must be reasonable and necessary. Pernell v. Capital Hill Masonry, 11 BRBS 582 (1979).

In this case, Carrier St. Paul paid all medical expenses for Claimant spanning from the time of his March 25, 1996 injury until September 15, 2002. Since St. Paul was not on the risk at the time of either of Claimant's subsequent work-related injuries, St. Paul was not responsible for the medical expenses incurred by Claimant during those periods of time. Consequently, I find that Carrier AI shall be responsible for all medical expenses incurred following Claimant's August 1, 2000 injury through November 5, 2001, when Claimant was reinjured while Carrier C & I was on the risk. C & I therefore shall pay all reasonable and necessary medical expenses related to treatment of Claimant's November 5, 2001 injury, including payment for Claimant's wrist fusion surgery. Carriers AI and C & I shall reimburse Carrier St. Paul for medical expenses paid by Carrier St. Paul during the respective periods when Carriers AI and C & I were on the risk.

⁴ The Court need not determine Claimant's average weekly wage at the time of the August 1, 2000 injury, as Claimant did not miss any time from work as a result of this injury.

⁵ In his brief, Claimant asserts that he earned \$38,795.64 during this time period. Having added all wages earned during the relevant time period, including a \$3,000 bonus, the Court arrived at a slightly higher figure, as reflected above. (CX. 1, pp. 1-14).

Credits for Prior Awards

To avoid double recovery, if the claimant previously received a state compensation award, a scheduled award under the Act or a Jones Act judgment, for any injury which was a partial cause of the underlying disability, the last aggravating employer or carrier may be entitled to credits for these awards. There is no credit, however, for any previous injury for which the claimant may have been entitled to receive an award, but in fact did not get it. 33 U.S.C. § 903(e); Strachan Shipping Co. v. Nash, 782 F.2d 513 (5th Cir. 1986) (en banc), aff'g 751 F.2d 1460 (5th Cir. 1985), aff'g 15 BRBS 386 (1983); Bracey v. John T. Clark & Son of Maryland, 12 BRBS 110 (1980).

In this case, Carrier C & I are entitled to a credit against all prior compensation paid by Carrier St. Paul during the time periods when C & I was on the risk and St. Paul mistakenly paid compensation to Claimant. Carrier C & I shall reimburse Carrier St. Paul for benefits paid by Carrier St. Paul from March 19, 2002 through September 15, 2002.

Conclusion

Based on the foregoing findings of fact, conclusions of law and the entire record, I hereby enter the following compensation order. All other issues not decided herein were rendered moot by the above findings.

ORDER

It is hereby ORDERED, ADJUDGED AND DECREED that:

1. Employer and Carrier C & I shall pay Claimant temporary total disability payments for the time period from March 19, 2002, through December 8, 2002, based upon an average weekly wage of \$746.45.
2. Employer and Carrier C & I shall pay Claimant permanent total disability compensation for the time period from December 9, 2002, through December 31, 2002, based upon an average weekly wage of \$746.45.
3. Employer and Carrier C & I shall pay Claimant permanent partial disability compensation for his scheduled right hand injury of forty-five percent in accordance with Sections 8(c)(3) and (19) of the Act, beginning January 1, 2003, based on an average weekly wage of \$746.45.
4. Employer and Carrier C & I shall pay all reasonable and necessary medical expenses related to treatment of Claimant's wrist condition which have

been incurred since November 5, 2001. Carrier C & I shall reimburse Carrier St. Paul for medical expenses paid by St. Paul during this period.

5. Employer and Carrier AI shall pay all reasonable and necessary medical expenses related to treatment of Claimant's wrist condition which were incurred from August 1, 2000, through November 4, 2001. Carrier AI shall reimburse Carrier St. Paul for medical expenses paid by St. Paul during this period.
6. Employer and Carrier C & I shall receive a credit for benefits and wages paid. Carrier C & I shall reimburse Carrier St. Paul for benefits paid by St. Paul from March 19, 2002, through September 15, 2002.
7. Employer and Carrier C & I shall pay Claimant interest on any accrued unpaid compensation benefits at the rate provided by 28 U.S.C. § 1961.
8. Within thirty days of receipt of this Order, counsel for Claimant should submit a fully-documented fee application, a copy of which shall be sent to opposing counsel, who shall have twenty days to respond.
9. All computations of benefits and other calculations which may be provided for in this order are subject to verification and adjustment by the District Director.

ORDERED this 26th February, 2004, at Metairie, Louisiana.

A

LARRY W. PRICE
Administrative Law Judge

LWP:bbd